No. 45

JAN 10 1909

Supreme Court of the United States

DUPLEX PRINTING PRESS CO.,

Appellant

against

EMIL J. DEERING, *etc., et al.,*

Appellees

BRIEF FOR APPELLEES.

FRANK X. SULLIVAN,

Solicitor for Appellees.

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Supreme Court of the United States

DUPLEX PRINTING PRESS COMPANY,
Complainant Appellant,

against

EMIL J. DEGENS and WILLIAM BRAMLEY, individually and as Business Agents of District Council No. 15 of the International Association of Machinists; MICHAEL T. NEYLAND, individually and as Business Agent of Local Lodge No. 328 of the International Association of Machinists; and EDWARD T. NELSON, individually and as Business Agent of the Riggers' Protective Union; JACOB KEPPLER, individually and as Vice President of the International Association of Machinists,
Defendants Appellees.

Statement.

This is an appeal from a final decree dismissing the complaint and denying the plaintiff's right to an injunction after a trial, which was affirmed by

the Circuit Court of Appeals of the Second Circuit (fols. 237-238).

Cause of Action Set Forth in the Complaint.

The substance of the complaint is that the defendants are engaged in promoting an illegal combination or conspiracy for the sole purpose of interfering with the complainant's business and interstate commerce.

The Duplex Printing Press Company, the appellant, manufactures the "Duplex Printing Press," at Battle Creek, Michigan (fol. 11).

The only defendants served with process in this action were Emil J. Deering, William Brandey and Michael T. Neyland. The defendants, Deering and Brandey, are Business Agents of a voluntary, unincorporated association known as District Council No. 15 of the International Association of Machinists, operating exclusively in the City and State of New York. Michael T. Neyland is Business Agent of another voluntary, unincorporated association known as Local Lodge No. 328 of the International Association of Machinists, existing and carrying on business solely within the City and State of New York. Each of these voluntary, unincorporated associations have a President and Treasurer, and no process was served on either of these officers and therefore jurisdiction was not obtained over these associations as they were not served in accordance with Section 1919 of the Code of Civil Procedure of the State of New York. Process was not served on any officer of the International Association of Machinists, which is a separate, voluntary, unincorporated association, having its main office and place of business at Washington, D. C. Members of District

Council No. 15 of the International Association of Machinists and Local Lodge No. 328 of the International Association of Machinists, by reason of their membership in these associations, automatically became members of the International Association of Machinists, which is the parent body, and remain as such as long as the District Council and the Lodge Local remain in good standing with the parent body. At the time of the trial of this action the defendants, Deering and Bramley and Neyland, were members of the International Association of Machinists, the voluntary, unincorporated associations to which they belong, as previously described, being at the time in good standing with the parent body.

For the purpose of brevity the International Association of Machinists will hereinafter be referred to as the "International Association"; District Council No. 15 of the International Association of Machinists will hereinafter be referred to as "District Council"; and Local Lodge No. 328 of the International Association of Machinists will hereinafter be refered to as the "Local Lodge."

The International Association of Machinists' members are scattered throughout the United States and Canada, and is composed of local lodges and district councils formed throughout the territory above mentioned (fol. 107).

A Short Summary of the Undisputed Evidence which will hereafter be quoted and referred to.

In the year 1909 the "International Association" inaugurated the policy of advocating an eight hour day and a minimum rate of wage for its members employed in industries manufacturing printing presses and paper making machines. The purpose

of inaugurating this policy was to improve the condition of the members of the International Association employed in the industries above mentioned by reducing the hours of labor and increasing the rate of wage therefor. Between the years 1909 and 1913 the International Association was successful in having a great majority of the employers in the industries above mentioned adopt the eight hour day and the minimum rate of wage. During all of this period the defendants and the International Association were in communication with the appellant for the purpose of securing the adoption of this plan by it and it was understood by the appellant that it was not an attempt to establish these conditions solely in the appellant's plant but that it was part of a comprehensive movement in the trade to establish these conditions in the industries above referred to.

From 1909 to August, 1913, the differences between the defendants, the International Association, and the appellant resulted in nothing more than argument and discussion. During all of this period the members of the International Association handled the product of the appellant when ever called upon to do so and it was not until after a lockout or strike occurred at the plant of the appellant at Battle Creek, Michigan, on August 27, 1913, that the members of the International Association refused to handle the appellant's product. The appellant refused to establish the eight hour day and pay a minimum rate of wag eas adopted by the International Association in 1909 and refused to employ the men of the International Association to manufacture its product at Battle Creek, Michigan. After the strike at Battle Creek, Michigan, the International Association took this position with the appellant: That it would do all of the appellant's work or none of it, and that if

its members were not employed to manufacture the presses at Battle Creek, Michigan, then its members would not handle and erect the presses of the appellant when manufactured and shipped to other parts of the country, and also that they would not handle and erect these presses manufactured by men employed more than eight hours per day and receiving less than the minimum rate of wage adopted, as previously stated.

In August, 1913, after an almost uninterrupted series of conferences running from 1909, the International Association determined that a strike should be inaugurated at the appellant's plant at Battle Creek, Michigan, unless the eight hour day was established and the minimum rate of wage adopted put in force. Before that order was transmitted to the local union at Battle Creek, Michigan, the appellant discharged some nineteen men and it was alleged by others working in the plant that in the discharge of these men the appellant had discriminated against union men. After the discharge of these nineteen men, the other union men in the plant ceased work and the strike followed and this strike was in progress at the time the order of the International Association above mentioned was received. The order of the International Association was directed as a means of effecting the establishment of the eight hour day and the minimum rate of wage in the plant of the appellant. A perusal of the evidence will disclose that since the strike on August 27, 1913, the members of the International Association have refused to work for the appellant and to handle its product wherever it might appear.

The real purpose of this action is not to enjoin the defendants or to limit the action of the International Association but is to procure the court in effect to force the International Association men

throughout the United States to handle and erect the printing presses of the appellant notwithstanding that the appellant has locked out the union men at Battle Creek, Michigan, and the union men there have struck against the appellant; of having this court declare that the refusal of the International Association members to handle and erect the appellant's presses constitute a conspiracy against the appellant and is an obstruction to interstate commerce.

The Undisputed Evidence.

The plaintiff offered in evidence several articles appearing in the "Machinists' Monthly Journal" which is the mouthpiece of the International Association and various resolutions and letters emanating from the International Association or allied trades upon the theory that the defendants must be charged with knowledge of the matters therein referred to and the defendants concede that it was in furtherance of the purpose and plan stated in this documentary evidence that their activities were directed. Vice-President Keppler of the International Association of Machinists gave a historical resume of the efforts of the association to establish the eight hour day and the minimum rate of wage and it appears as a part of the evidence in support of the appellant's cross-bills (72 173):

> "During the year of 1909, I had the pleasure of attending two conventions, of the Printing Pressmen, held in Omaha, Nebraska, and of the Photo Engravers, in Milwaukee, Wisconsin, during which time a better understanding was reached whereby their members have demanded I. A. of M. cards when machinists were being installed or re-

gained in printing houses. That in itself has helped us not only to organize some firms, but has been the means of maintaining organization and securing the long hours for eight-hour day for our members in localities where organized, with greater pay and better working conditions. Further, it was the means through which numerous other firms granted better conditions; among them, permit me to mention a few facts relative to the R. Hoe & Co. of New York, they being the largest in this line, where the following was secured since 1909, and starting practically with no working organization."

Mr. Merritt then read an extract from the report of Vice-President Keppler on page 25 of same proceedings, as follows:

"Strikes have also been in progress in this line for some time for eight-hour day at the Oswego Machine Co. of Oswego, New York, and the Duplex P. P. Co. of Battle Creek, Mich.; both had been operating on the ten-hour basis.

"While conferences are being held with various employers in the industry, the cry of their competitors is continually heard, especially referring to these firms mentioned in the *Typographia* of October 25, 1913.

"Vice-President Keppler wishes to again call your attention to the fact that a majority of the printing firms of New York City and Plainfield have granted an eight-hour day on the installment plan, and unless their competitors are brought to the same terms we are liable to lose all the conditions we have already gained, or face a big strike of printing machinery shops in

> the spring. You are therefore urged to get busy on the list of firms that will be appended to this issue of the *Organizer*" (fol. 17, 176).

In the Machinists' Monthly Journal for October 10, 1913, which forms part of the appellant's case, appears the following:

> "As the General Executive Board, during its session in June, this year, had sanctioned a strike at the Duplex Printing Press shop, and other ten-hour shops in the printing machinery industry, there was nothing else to do but to carry out their instructions, and, therefore, wired our local organizer, Brother Thompson, who was on the ground, to declare a strike, which was done August 27" (fols. 113-114).

The appellant's part was working its men ten hours a day and refusing the eight-hour schedule demanded by the International Association. Mr. Stone, the President of the appellant, on cross examination, stated:

> "Mr. Keppler and Mr. Edwards had continuously urged arbitration of the strike. We are working our men ten hours a day at Battle Creek at the present time, and we pay them from $2 to $10 a day, but we do not have any uniform minimum scale.
>
> "During all this time from 1909 to 1913, up to the time of the strike, Mr. Keppler was urging me to establish an eight-hour day and the union rate of wage as a minimum scale.
>
> "Q. He had told you at all of these con-

ferences and subsequent to 1909 and between that date and 1913, that there was an effort being made by the International Association of Machinists to create an eight-hour day in this industry that you were engaged in. A. Yes.

"Q. And he told you that in this whole industry he was trying to create union conditions as to the payment of a minimum wage for the eight hours of labor, did he not? A. Yes.

"Q. Certain letters were sent to you which were received by others, as far as you know? A. Yes.

"Q. And the effort of the International Union was not only to have you establish an eight-hour day and pay a minimum rate of wage to the men employed in the country where your industry was involved; you know that and had been told that? A. Yes.

"Q. So you, as far as this union was concerned in their requests and demands upon you, they were similar to the demands made upon the Hoe Company, upon the Goss Company and upon the other printing press manufacturers in the country; that is a fact, is it not? A. I simply took the position that they had no right to make any demand.

"Q. I appreciate what your position was, but I am asking you a question; their demands were similar? A. If you call it a demand; I do not recognize a demand of that sort.

"Q. But that is the fact, that they were asking the same from others? A. Asking; yes.

"Q. That they were asking from you? A. Yes.

"Q. So that they did not select you from all the printing press manufacturers or men in this industry to ask these things of, did they? A. No.

"Q. Or attempt to enforce them? A. No (fols. 396-400).

Notwithstanding its refusal to adopt this schedule the International Association had not declared a strike and had continued to handle and erect the complainant's presses and union pressmen operated them. Mr. Stone testified:

"I had my first interview with Mr. Keppler with respect to the erection of presses at the time the press came to the *New York World*, and we were deeply interested in having that press erected as speedily as possible.

"Q. And after a conference Mr. Keppler stated to you that that he was going to allow and permit the men to finish the erection of the machine? A. Yes.

"Q. And he did say 'permit and allow' did he not? A. Yes, although that incident and the incident relating to the *San Francisco Sun* were before the men were discharged in August, 1913, and from the time of the agreement with Keppler the presses continued to be erected by members of the Machinists' Union without trouble, until the strike in August, 1913, and it was after that date that the Machinists' Union refused to handle our machinery for the purposes of erection (fols. 109, 110).

The appellant introduced into evidence a resolution passed at a convention of the International Printing Pressmen and Assistant's Union (fols. 198, 199) and a letter written to the President of the appellant by George L. Berry (fols. 452, 453) and attempted to argue from the resolution and letter that a general scheme and secret understanding existed between the International Association and the International Printing Pressmen and Assistants' Union to prevent the operation of the presses of the appellant. The resolution as adopted by the International Printing Pressmen & Assistants' Union pledged "*moral support*" and reads as follows:

> "Resolved, That we pledge our moral support to those now on strike for eight (8) hours against the Duplex Printing Press Company, at Battle Creek, Mich., to the end that we do intend, wherever possible to protect the fair employer, but will prevent if possible, the installation of presses by scab labor, and also use our influence to prevent the placing of orders for presses manufactured under unfair conditions; and further, that we continue to demand I. A. of M. cards where machinery is being installed or repaired, and that these resolutions be given as much publicity as possible among printing pressmen and printing trades" (fols. 198, 199).

The letter written by Mr. Berry to Mr. Stone, the President of the appellant, states the desire of Mr. Berry to act as "mediator or arbitrator" in settling the industrial difficulties existing between the appellant and the International Association.

The uncontroverted evidence, however, discloses that after the press was installed in the New York Law Journal that it was operated by union pressmen, members of the International Printing Pressmen and Assistants' Union. Mr. Cosgrove, the manager of the New York Law Journal, testified:

> "Q. And then after it went into your plant the members of the Pressmen's Union operated it and have since operated the press; is that not a fact? A. Surely, we are a union shop; we have got to be" (fol. 310).

There was not a scintilla of evidence adduced on the trial which disclosed that the appellant had lost any sales by reason of the defendants' activity or that the presses of the appellant was not operated after they were installed. The difficulty that the appellant met with was in the installation and erection of its printing presses and this difficulty arose by reason of the fact that the members of the International Association refused to work on the appellants' product. In every specific instance which the appellant presented to the court the fact developed that after the press was installed it was operated by union pressmen. Although it appears undisputedly that the appellant does about seven per cent. of the business in this country in the manufacture and sale of presses, the appellant neither alleged nor proved that any union pressman had ever refused to operate the appellant's presses and this Court will take judicial notice of the fact that the New York Law Journal has been published uninterruptedly since October, 1913, the date when the appellant's press was installed in that plant.

POINT I.

The means employed by the defendants to secure an eight hour day and minimum rate of wage throughout the trade are authorized by the Clayton Amendment to the Sherman Anti-Trust Law.

U. S. Statutes at Large, Vol. 38, Chap. 323.

Sections 6 and 20 of the Clayton Bill, are as follows:

> "Sec. 6. That the labor of a human being is not a commodity or article of commerce. Nothing contained in the anti-trust laws shall be construed to forbid the existence and operation of labor, agricultural, or horticultural organizations, instituted for the purposes of mutual help, and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof; nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the anti-trust laws.
>
> "Sec. 20. That no restraining order or injunction shall be granted by any Court of the United States, or a judge or the judges thereof, in any case between an employer and employees, or between employers and employees, or between employees, or between persons employed and persons seeking employment, involving or growing out of, a dispute concerning terms or conditions of employment, unless necessary to prevent ir-

reparable injury to property, or to a property right, of the party making the application, for which injury there is no adequate remedy at law, and such property or property right must be described with particularity in the application, which must be in writing and sworn to by the appellant or by his agent or attorney.

"And no such restraining order or injunction shall prohibit any person or persons, whether singly or in concert, from terminating any relation of employment or from ceasing to perform any work or labor, or from recommending, advising, or persuading others by peaceful means so to do; or from attending at any place where any such person or persons may lawfully be, for the purpose of peacefully obtaining or communicating information, or from peacefully persuading any person to work or to abstain from working; or from ceasing to patronize or to employ any party to such dispute, or from recommending, advising, or persuading others by peaceful and lawful means so to do; or from paying or giving to, or withholding from, any person engaged in such dispute, any strike benefits or other moneys or things of value; or from peaceably assembling in a lawful manner, and for lawful purposes; or from doing any act or thing which might lawfully be done in the absence of such dispute by any party thereto; nor shall any of the acts specified in this paragraph be considered or held to be violations of any law of the United States."

In the year 1908, *Loewe v. Lawlor*, 208 U. S. 274, was decided by the United States Supreme Court. This was an appeal from a demurrer interposed by the defendants. After the demurrer was overruled the case was tried and in October, 1912, there was a judgment for the complainant for $252,130.00 which was subsequently affirmed in 1915 by the United States Supreme Court (*Lawlor v. Loewe*, 235 U. S. 522).

The question as to the legality or illegality of the acts of a labor union had been a mooted and unsettled question and the reason for this uncertainty is most concisely stated by Mr. Justice Holmes:

> "the ground of decision really comes down to a proposition of policy of rather a delicate nature concerning the merit of the particular benefit to themselves intended by the defendants, and suggest a doubt whether judges with different economic sympathies might not decide such a case differently when face to face with the issue." (See *Gill Engraving Co. v. Doerr*, 214 Fed. R. 110, note at bottom of page 120.)

This factor of economic sympathies, prior to the Clayton Amendment to the Sherman Anti Trust Law, rendered the question of what conduct was lawful so uncertain that it was not possible to safely direct the action of a combination of workingmen during a period of an industrial dispute. The economic sympathies of the court before whom their acts were to be construed was a primary factor to be considered. A court with sympathies opposed to activity of workingmen might be prone to declare their acts to be illegal and unlawful, with the result of a loss of liberty or property of

the members of the labor organization. On the other hand, if the court's economic sympathies were with the workingmen the same acts might be construed to be legal and lawful.

Whether the Clayton Amendment to the Sherman Anti Trust Act merely clarifies or amplifies the pre-existing law is immaterial. In any event it clearly states what may be done by a combination of workingmen formed into what is commonly designated as a labor or trade union.

When the Clayton Amendment was before Congress, it was recognized that the purpose of the provision with reference to labor was intended to change the law, or clarify the law as laid down by the Supreme Court in the Danbury Hatters case *(Loewe v. Lawlor, supra,)* and the Retail Lumber Dealers case, *(Eastern States Retail Lumber Dealers' Assn. v. U. S. 234 U. S. 600.)*

Senator Nelson spoke on this subject on September 30, 1914. The Congressional Record of October, 1914, page 17371, contains the following:

> "Now I come to the next provision, the boycott provision. In my opinion that provision includes both the primary and secondary boycott. There was only two classes of cases so far as I know, where the Supreme Court had passed upon this question. One was a case against laboring men; the other against retail lumber dealers. The former was in what is known as the Danbury Hatters case, where by secondary boycott, the workers broke up the industry of a manufacturer of hats in Danbury, Conn. The other was known as the Retail Lumber Dealers case, recently decided by the Supreme Court, in which retail lumber dealers throughout the country undertook to buy

cott every manufacturer and wholesale dealer who sold direct to customers in towns where these dealers were located. The Supreme Court applied the same rule that it did in the Danbury Hatters case and held that notwithstanding the Retail Lumber Dealers move with circumlocution and in a careful and studied manner by circulars and letters, it was nevertheless in fact a boycott, and the Court enjoined it and prohibited the continuance of it. . . . .

"So, Mr. President, when you study this bill from firs. to last, you will find when it comes to these trusts, monopolies and combinations, the bill deals with them in the most gingerly and harmless manner. It administers relief in homeopathic doses of the very slightest and feeblest kind. This is true as to labor organizations also. They imagine that they get a good deal out of the phrase in Section 6, declaring that labor is not an article of commerce. They imagine they get a good deal of relief out of the Section which provides that no injunctive relief shall be permitted except it involves property or property rights. They imagine they get immense relief from the requirement that in a few limited cases actions shall be tried by jury. When you sum it all up, they get almost as little out of this bill as the public at large gets out of the remedial sections of the bill in respect to trusts, monopolies and unjust combinations."

From the foregoing it affirmatively appears that it was the decision in the Danbury Hatters' case (*Loewe v. Lawlor, supra,*) that brought about the Clayton Amendment in Congress and unquestion-

ably it was the great publicity given to this case that created the sentiment in favor of the Clayton Amendment.

In *Loewe v. Lawlor*, 208 U. S., at page 301, Mr. Chief Justice Fuller said:

> "The records of Congress show that several efforts were made to exempt, by legislation, organizations of farmers and laborers from the operation of the act and all these efforts failed so that the act remained as we have it before us."

See also opinion of Coxe, J., in Circuit Court of Appeals, 209 Fed. R. 721, at page 729.

To refuse to recognize the undisputed fact that the Clayton Amendment was intended to clarify the law in regard to the proper limits within which labor organizations might act in furthering the interests of their members would be to close our eyes to the situation, as it is obvious that the act was intended to define what could be lawfully planned and executed by the concerted action of labor associations in furthering the legitimate object of their creation.

A labor organization is formed for the benefit and protection of its members and is established for the purpose of securing for them a reduction in the hours of labor and an increase in wages. The union is based upon the idea that the individual workman cannot fully protect himself against employers but that by united action he can be better protected in the respects mentioned. It is supported by the dues of its members; the member paying for the benefits which he expects to realize from the organized action of himself and his co-workers. (*See Gallo v. Barton*, 161 A. D. 287, 294 N. Y. Rep.)

The court will take judicial knowledge of the fact that the toilers of our country are industrious law abiding citizens; that the homes of these workmen represent their principal savings and are regarded by them as their provision for the future. It is not a mere matter of general importance to them to know what they can and cannot lawfully do because a judgment rendered against them means that they are deprived of their liberty, their property and their home.

It is in contrast to imposing a fine upon one of the large industrial combinations because in that instance it simply results in a change of form of the organization and an increase of price of the commodity to the consumer.

The collection of the judgment in the Danbury Hatters' case (*Loewe v. Lawlor*, 208 U. S., 322) by sale and execution of the workingmen's homes could not be shifted from the shoulders of those directly bearing the burden to the public at large. It was a calamity for them, and the purpose of the Clayton Amendment was in part to prevent the recurrence of just such a catastrophe. It was enacted into statute clarifying and amplifying the laws relating to labor organizations and their activities so that the workingmen composing these organizations might know specifically just what could be lawfully done and what could not be lawfully done. The appellant in its complaint alleges that the International Association of Machinists and the local branches thereof and the members and officers of the association have been engaged in a combination or conspiracy to monopolize the machinists' trade throughout the country. This allegation is answered specifically by Section 6 of the Sherman Anti Trust Law, as amended by the Clayton Act. On this question the said section reads as follows:

"Sec. 6. Nothing contained in the Anti-Trust Laws shall be construed to forbid the existence and operation of labor * * * organizations or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof; nor shall such organizations or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the Anti-Trust Laws."

In order to indicate how exactly the defendants in carrying out the general purpose of the International Association, confined themselves to the means authorized by the Clayton Amendment, and while that act had not been finally passed at some periods of the defendants' activities it had already taken form and had been submitted to Congress, the following parallel columns are presented for the perusal of the Court:

Acts Authorized by the Clayton Amendment.

"Nothing contained in the anti-trust laws shall be construed to forbid or restrain individual members of such organizations (labor organizations) from lawfully carrying out the legitimate objects thereof."

Acts of Defendants.

The appellant's President on cross-examination testified:

"During all this time from 1909 to 1913, up to that time of the strike, Mr. Keppler was urging me to establish an eight-hour day and the union rate of wage as a minimum scale.

"Q. He had told you at all of these conferences and subsequent to 1909 and between that

> date and 1913, that there was an effort being made by the International Association of Machinists to create an eight-hour day in this industry that you were engaged in? A. Yes.
>
> "Q. And he told you that in this whole industry he was trying to create union conditions as to the payment of a minimum wage for the eight hours of labor, did he not? A. Yes" (fols. 207-208).

Unquestionably the effort of labor organizations to secure an equalization of the hours of labor and rate of wages throughout a trade is not alone lawful but extremely beneficial both to employers and employees and in accomplishing this purpose they are regarded with favor and approval by the Courts of the community.

In *Lucker* v. *Lucore*, 209 Fed. R. 221, at 227, the Court said:

> "All must admit not only that they are lawful but that they are highly beneficial when legally and fairly consulted."

In *Wilson* v. *New*, 243 U. S. 342, in sustaining the constitutionality of the Adamson Act, fixing the hours of labor and minimum rate of wages for railroad employees, the Supreme Court of the United States said:

"To an employee a wage law may be of more vital consequence; being of the very essence of life."

In *Paine Lumber Company* v. *Neall*, 244 U. S. 459, at p. 471, Judge Holmes, speaking for the Court, said:

"We shall not believe that the ordinary action of a labor union can be made the ground of an injunction under those laws until we are so instructed by the New York Court of Appeals."

In *Bossert* v. *Dhuy*, 221 N. Y. 342, which is the last expression of the Court of Appeals of the State of New York involving the same question as that presented on this appeal, the Court said:

"Upon all of the findings before us the statement in the finding that there was a 'combination to organize' the non-union mills of Brooklyn' simply means that the Brotherhood determined to carry out the provisions of its constitution relating to non-union made material by insisting upon its enforcement and by imposing the penalties provided thereby in case of failure of any of its members to comply therewith."

In the Bossert case (*supra*) the Court also said:

"An association of individuals may determine if its members shall not work for specific employers of labor. The question, however, is as to its purpose in reaching such determination. If the determination is reached in good faith; for the purpose of

bettering the condition of its members and not through malice or otherwise to injure an employer, the fact that such action may result in causing injury to the employer does not constitute justification for issuing an injunction against enforcing such action."

Further in the Bossert case (*supra*), the Court said:

> "Certainly the condition complained of has no tendency to produce a monopoly of manufacture of building since the more successful it is the more competitors are introduced into the trade."

It is perfectly clear that the object sought by the defendants was legitimate and laudable and as such affords no ground for charging them with a conspiracy.

Acts Authorized by the Clayton Amendment.

"No restraining order or injunction shall be granted by any Court of the United States or a judge or judges thereof, in any case between an employer and employees * * * involving or growing out of a dispute concerning terms or conditions of employment."

Acts of Defendants.

The evidence adduced on the trial disclosed without contradiction that a dispute existed between the complainant and the defendants concerning the terms and conditions of employment, both as to hours and wage, which resulted as complainant states in a strike; defendants alleging a lockout, followed by a strike.

"August 22, I drafted a letter setting forth conditions for the inauguration of an eight-hour day, wage scale, overtime rates, apprenticeship system, etc. The same was mailed to the Duplex Printing Press Company, of Battle Creek, Michigan, also to some other employers in this industry, who are now operating under the eight-hour basis, as they had claimed that unless something was done with these ten-hour shops they, the eight-hour shops, would again be forced back to longer hour. I regret to say, however, that just about the time this letter reached the Duplex Printing Press Company word was received from Battle Creek that eleven of our members had been discharged, which was closely followed by eight more being let go, discrimination being alleged.

"As the General Executive Board, during its session in June, this

year, had sanctioned a strike at the Duplex Printing Press shop, and other ten-hour shops in the printing machinery industry, there was nothing else to do but to carry out their instructions, and, therefore, wired our local organizer, Brother Thompson, who was on the ground, to declare a strike, which was done August 27" (fols. 113-114).

The appellant in its brief attempts to draw an analogy between the case at bar and the case of *Paine Lumber Company* v. *Neal* (*supra*), and relies primarily in its argument upon the dissenting opinion written in that case. A careful reading of this dissenting opinion discloses that the court stated that Section of 20 of the Sherman Anti Trust Act, as amended (Clayton Amendment) did not apply because there was no dispute between employer and employee. In the case at bar the evidence discloses that a strike occurred on August 27, 1913, and continued and was in existence up to and including the time of the trial; that the dispute arose between employer and employee over the hours of labor and the questions of wages to be paid; and the facts as adduced on the trial disclose beyond peradventure of contradiction that this case falls directly with Section 20 and is not analogous to the case of *Paine Lumber Company* v. *Neall* (*supra*).

The position of the defendants in the case at bar

as previously stated, has been that the defendants will do all of the appellant's work or none of it; that it refuses to handle and erect the appellant's presses unless it can manufacture them.

The appellant's contention is that it desires to employ men ten hours a day without any basic minimum wage and to employ members of the International Association when it desires them to erect its presses when sent out from Battle Creek, Michigan, and the application in this action is primarily to compel the members of the International Association of Machinists to erect the presses of the appellant constructed under the conditions above referred to.

Acts Authorized by the Clayton Amendment.

"And no such restraining order or injunction shall prohibit any person or persons, whether singly or in concert from terminating any relation of employment."

Acts of Defendants.

Mr. Preston, the general Secretary-Treasurer of the International Association of Machinists, testifying for the appellant, said:

"August 22, I drafted a letter setting forth conditions for the inauguration of an eight-hour day, wage scale, apprenticeship system, etc. The same was mailed to the Duplex Printing Press Company, of Battle Creek, Michigan, also to some other employers in this industry, who are now operating on the eight-hour basis, as they had claimed that unless

something was done with these ten-hour shops they, the eight-hour shops, would again be forced back to longer hours. I regret to say, however, that just about the time this letter reached the Duplex Printing Press Company word was received from Battle Creek, that eleven of our members had been discharged which was closely followed by eight more being let go, discrimination being alleged" (fol. 112, 113).

Immediately after the union men at Battle Creek, Michigan, were discriminated against the International Association declared a strike, (fol. 114). The action of the members of the International Association in "terminating" their relation of employment with the appellant is expressly authorized by the Clayton Amendment and was lawful prior thereto.

Cummings v. *National Protective Association*, 170 N. Y., 324.

Paine Lumber Company v. *Neall*, 244 U. S., 459.

Acts Authorized by the Clayton Amendment.

"or from ceasing to perform any work or labor."

Acts of Defendants.

What the defendants did and what each did appears as follows:

"Q. In other words,

any member of the International Association of Machinists would not be permitted to handle the product of the Duplex Company? A. Yes.

"Q. And he told you that the reason was because of the strike at Battle Creek? A. Yes.

"Q. But you could have men for use with anybody else? Did he not say that? A. In that show, on that occasion" (fols. 346-347).

The failure to handle the product of a concern against which a strike is in progress comes expressly within the language of the Clayton Bill authorizing members of a labor organization "from ceasing to perform any work or labor" and is also recognized as lawful and proper.

Paine Lumber Company v. *Neall*, 244 U. S. 459.

Bossert v. *Dhuy*, 221 N. Y. 342.

Acts Authorized by the Clayton Amendment.

"or from recommending, advising or persuading others by peaceful and lawful means so to do" (cease their work or labor).

Acts of Defendants.

The plaintiff's witness Burkle was one of the pickets for the International Association during the early part of the strike against the appellant. He testified:

"I was instructed to induce the men working

there to cease work, and attempted to persuade them, by argument, to cease work, and I was not told to assault anyone. When I spoke of the work being stopped on the machines I meant that the men who were employed on them had withdrawn their services" (fol. 225).

He also testified:

"I was out on strike and in New York City, and received orders from defendant Deering to be at the place of erection early Monday morning to find out who was going to erect the job and try and stop them. Henry Soeller, a former employee of the Duplex Company received similar instructions from Mr. Deering, and I went over to the Nicoletti Brothers' place to get hold of the erector Smith and try to get him to quit, but he would not do it. I stayed around there for three or four days and saw the press delivered by the drayman. I reported to Deering who

the erector was and my success in making him quit" (fols. 245-246).

It will be found that all that was done by anyone in behalf of the International Association or by or at the direction of the defendants was recommending, advising or persuading others not to work in handling or installing the presses of the appellant or attempting so to do. This comes exactly with the language of the above portions of the Clayton Amendment.

Acts Authorized by the Clayton Amendment.

"that no injunction shall prohibit any person or persons from ceasing to patronize or to employ any party to such dispute, or from recommending, advising or persuading others by peaceful and lawful means so to do."

Acts of Defendants.

The defendants went to numerous customers of the appellant, among others to the manager of the New York Law Journal. The defendant Deering called on him and Mr. Cosgrove testifies to the following conversation:

"You are going to put in a press next week?" I said, "No." He said, "Well, you have ordered a press," and I said, "Yes." He said, "Well, I will tell you there is a strike on at Battle Creek and you will not be able to have that press hauled to your place." I said, "No, I did not know that." He said, "Yes, there is a

strike out there and the truckmen and helpers on these machine-moving trucks are all now in the Machinists' Union and they will not haul any machines." I said, "What had that got to do with us?" He said, "I will tell you you cannot haul it because you cannot haul out the machinery and it is no good to you on account of this strike at Battle Creek." I said, "What do you want me to do?" And he said, "I will tell you. Go over and see Mr. Stone, in the World Building. Mr. Stone, I think, is President of the Duplex Company." And he said, "You better go over and see Mr. Stone and tell him that I was here and you can state to him the conversation we had here. Maybe your statement to him or your presence over there or your visit, will probably have some bearing on the strike that is now on at Battle Creek." I went over to see Mr. Stone and Mr. Dowe and they said

there was one strike there; one in Akron; and in Toledo; and in four; the power would be delivered into the plant. That was the end of the visit on Saturday." (fols. 294-295).

This is typical of the declarants' contact with the other patrons of the Hygeia Company.

The contact pursued with the other customers to which reference is made in the case differed in no substantial particular from that shown in the above quotation.

National Exposition Company.

This company was organized in 1912 (fol. 315), and among other things the company held exhibitions of printing machinery appliances and supplies at the Grand Central Palace in New York City; such exhibitions were held in April, 1913, and April, 1914 (fol. 315). The President of this company, Mr. Cockburn, testified that at the show held in 1913, an Honorary Advisory Committee including representatives of organized labor was formed and the names of the members of this committee printed on the letter heads and paper of the company for the purpose of advancing the exposition; that among the names appearing as Honorary Vice-President was the name of Jacob J. Kepple, Vice-President of the International Association of Machinists. He further testified that the idea was to secure the stamp of trade union approval (fol. 324). He further testified that prior to the exposition in April, 1913, he met the defendant, Deering; that the very first question Deering asked him was whether or not he was going to

employ union help and stated to him that if he was to employ union men that all of the men employed at the exposition would have to be union men (fol. 338); that Deering informed him that in his (Deering's) opinion if some union men were employed and non-union men brought in to work that the union men would discontinue working (fol. 339), and because of this information furnished by Deering that he (Cochrane) wrote to the exhibitors requesting them to employ union help and that the witness had in mind that union machinists would not work in the same building with non-union machinists (fol. 342); that at the exposition in 1913, the press of the appellant was actually erected by the members of the International Association under the order and instructions of the defendant Deering and Keppler, Vice-President of the International Association (fol. 343); that at the time of the exposition in April, 1914, the defendant, Deering, stated to the witness that the members of the International Association could not handle the product of the Duplex Company made under non-union conditions while a strike existed at Battle Creek, Michigan (fol. 344).

Italian Herald.

The appellant sold one of its presses to the Italian Herald and the defendants informed the Italian Herald of the labor differences between the appellant and the International Association. When the press arrived from Battle Creek, Michigan, the Britton Trucking Company was engaged by the appellant to haul the press to the plant of the Italian Herald. The Britton Trucking Company employed members of the International Association to haul the press. When the press reached the plant of the Italian Herald the union men withdrew their

services and another truckman who engaged non-union men was hired and the press was delivered to the Italian Herald (fol. 272). At that time construction work was in progress on the building occupied by the Italian Herald. The witness Squiers testified that he was informed by the superintendent of the building that Deering had stated that if non-union men were sent into the building to erect the press that the union men employed in the construction of the building would cease working and would refuse to work with the non-union men (fol. 297). Because of this fact the non-union men ceased to work. The press did not go into the building until after twelve o'clock, noon, on Saturday, when all of the union men had left the building and the press was erected Saturday afternoon and Sunday (fol. 283).

The witness further testified that the superintendent did not state how the defendant Deering was going to accomplish the withdrawal of the union men but that he knew he would have to persuade some officer of the union who was over the men employed and that the officer in turn would persuade the men and that it would be by argument and persuasion that the men would cease work (fol. 301); that one Harley Warner, who was in charge of the erection of the press for the appellant, was a non-union man and that at the time the factory at Battle Creek, Michigan, was not working under union conditions and that the strike existed (fol. 302); that the acts complained of by the appellant with respect to this press was that Deering stopped the men bedding cards of the International Association from working on the press and refused to permit them to work further (fol. 274, 297).

Nicoletti Press.

The appellant sold one of its printing presses to Nicoletti Brothers of New York City. The bill of lading for the press was sent to one Charles F. Young, an employee of the appellant, in November, 1913; that after he received the bill of lading he voluntarily went to the office of the District Lodge and saw Deering (fol. 203); that at that time he was a member of the International Association by reason of his membership in the District Lodge; having been reinstated in that Lodge in the year 1912 (fol. 203); that Deering informed him that a strike was in progress at the plant of the appellant at Battle Creek, Michigan, and asked the witness whether he was going to stand with the union of which he was a member or with the appellant (fol. 206). That Deering informed the witness that if he persisted in working after a strike had been called that in conformance with the union rules, his union card would be taken away from him (fol. 207). That he understood that his obligation as a member of the union was to obey the instructions of the officers of the District Lodge with respect to working and refraining from working when a strike existed (fol. 227). That the defendant Deering went with the witness from the office of the District Lodge to the Charles Britton Trucking Company and that no objection to his going was offered by the witness (fol. 230); that on the way the conversation continued friendly and when the witness handed the bill of lading to Mr. Britton, Mr. Deering requested Britton not to haul the machinery; "that was in the form of a request; Britton was not a member of the union" (fol. 230). That there was no dispute; that they all were still friendly (fol. 230). The witness Burkle testified, with respect to the installation of

this press, that all that the International Association did was to withdraw the services of its members (fol. 259); that the witness acted as a picket and as such attempted to induce the erector, Smith, to quit work, which he refused to do when the press was erected. "It was under Mr. Deering's instructions I attempted to persuade men to cease working and if they did, well and good, and if they did not, I could not help it" (fol. 260). "I never saw any man assaulted or never heard Mr. Deering issue any orders to have any man assaulted" (fol. 260).

The witness Burkle further testified that he was instructed to induce men working there to cease working and attempted to persuade them, by argument, to cease work and was not told to assault any one (fol. 255).

This witness further testified that a man named Soeller, who was doing picket duty with him at the plant, told him that he should stay away from the pressroom as far as possible because something was going to happen (fol. 255). The witness testified (fol. 255) that nothing happened after the time Soeller told him to stay away from the plant "and I do not know where Soeller got his idea from." This is all the testimony with respect to the Nicoletti Press.

Plainfield Press.

It is stated in connection with the appellant's press purchased by the Plainfield Press that it was intimated that it might have trouble with the union pressmen whom it employed, but there is no evidence that it ever did have any trouble with the union pressmen.

Bolletino Della Sera.

The same method was adopted in attempting to prevent a press sold to this paper from being delivered. Deering ordered the International Association men to stop work (fol. 208-233). The defendant Deering is said to have stated to Young that he would do everything he could to prevent that machinery from going into the paper office. But "doing everything he could" is shown to be nothing more than he would adopt the means already described. It also appears that Deering had notified members of the International Association employed in repair shops not to handle or repair appellant's presses.

Violence.

The appellant attempts to show that violence was threatened. The defendant Deering is said to have laughingly said to Young that he would "shoot him" (fol. 211). But this was not considered as a threat. Young further testified that Deering threatened to take away his union card if he did not cease to violate the laws of the District Lodge and obey the strike order as the constitution of the District Lodge required (fol. 227). In this respect the witness testified:

> "The Nicoletti press was installed in November, 1913, at which time I met Deering.
>
> "Q. At that time you had your union card and claimed membership in the International Association of Machinists? A. Yes.
>
> "Q. You say that you met Deering prior to the installation of that press? A. Yes.
>
> "Q. You knew that he was an officer of

District Council No. 15, did you not? A. Yes.

"Q. And that was the District Council of which you were a member? A. Yes.

"Q. He informed you that there was a strike called by the International Association against the Duplex Company, did he not? A. Yes.

"Q. And that as a member you were not to work on the machinery of the Duplex Company? A. Yes.

"Q. That was the information that he conveyed to you at the office, was it not? A. Yes. That was the substance of the information." (Fol. 233.)

The witness further testified:

"Q. And he told you not to work upon it (Duplex printing press) as a member of the International Association of Machinists? A. Yes.

"Q. He further told you that if you did he would see that your card was taken away in the union? A. Yes.

"Q. That was the threat that he made at that time, to take your card away from you? A. Yes.

"Q. As provided by the union rules? A. Yes.

There was some testimony by the witnesses Young and Maddox that they had met with an assault in the highways of the City of New York after leaving the plant of the Italian Herald. There was no evidence to connect the defendants or any members of the International Association of Machinists with this assault. This assault, al-

though in no way being connected with the defendant or the International Association, could not be set out to be part of the general scheme or conspiracy and the continuous effort, as disclosed upon the trial, of the defendants and the Interational Association was to obtain an eight-hour work day and a recognized minimum rate of wage by simply refusing to handle the product of the appellant and by taking the position that they would do all of the appellant's work or none of it.

The evidence discloses that the defendants and the International Association of Machinists in all their activities covering a period of more than five years had always resorted to peaceful methods and the testimony of the pickets discloses that their instructions were simply to induce workingmen, by argument and persuasion, to cease work. It certainly cannot be argued from one isolated case of assault that the defendants or the International Association can be charged with having either instigated the assault or having knowledge of it or that it was part of the general comprehensive plan to improve the condition of its members by the insistence of the eight hour day and the minimum rate of wage.

The only other embarrassment which the appellant has met with in installing and erecting its presses since the strike is that where there are members of other unions in entirely different trades employed on a building if it was attempted to install one of the appellant's presses by non-union labor the union men in the other trades were likely to cease work, not because of any conspiracy, but because under union laws, it is customary so to do.

If what the International Association has planned and executed is a conspiracy or is in any way unlawful then a labor organization has become as impotent in improving the condition of

workmen as was the individual workman prior to such organization. It is undisputed that the sole purpose of the defendants is to improve the condition of its members by securing them proper hours of work and proper remuneration. They have submitted their terms to the appellant and these terms have been rejected upon the ground as stated by Mr. Stone that the appellant refused to recognize the rights of the organization "to make any demands." This has been followed by the workmen peacefully ceasing their employment in the establishment of the appellant at Battle Creek, Michigan, and that men of their organization refusing to erect the appellant's presses. There has been no interference with interstate commerce. There has been no threat made to any of the appellant's customers. All that has been done is to bring to their attention the existence of the labor difficulties now existing between the appellant and the International Association. If these are not peaceful means and are not lawful means to be employed by a labor organization in effecting the proper purposes for which it is created, then it is perfectly obvious that there is no such thing as lawful conduct on the part of a labor organization as soon as it begins to be effective.

The appellant's entire claim of conspiracy rests not upon the unlawfulness of any act, but upon the effectiveness of the act of the International Association in withdrawing its men from erecting these presses and advising proposed customers of this fact as a means of making the appellant consent, for business reasons, to establish an eight-hour day and a minimum rate of wage. The question of conspiracy, however, depends not upon the effectiveness of the means employed but whether such means are lawful and proper.

In the *Tri-City Central Trades Council* v. *American Steel Foundries*, 238 Fed. 732, it was decided that even though picketing and persuasion might interfere with the complainant's conduct of its business and make it harder to retain old employees and to hire and keep new ones, it would not warrant the granting of an injunction.

The Court said:

> "Indeed, the very act of striking often seriously interferes with that 'free and unrestrained control and operation of the employer's business' which the plaintiff here alleges as an object of the conspiracy charged; but the lawfulness or unlawfulness of the strike is not to be tested by such incidental effect of it. And so it is with persuasion and picketing, properly carried on in the interest of a lawful strike. The laborer may be strictly within his rights, although he obstructs 'the free and unrestrained control and operation of the employer's business.' The right to strike must carry with it by implication the right to interfere with the employer's business to a certain extent. The right to persuade prospective employees by legitimate argument must of necessity interfere with the employer's business. Where labor is essential to the successful conduct of a business, any interference with that labor is an interference with the employer's business. But whether the interference with the business is lawful or unlawful, depends upon the facts in each case."

The appellant has apparently misconstrued the decision in the Danbury Hatters' case (*Loewe* v.

Lawlor, supra,) and the decision in the case of *Paine Lumber Company* v. *Neall, supra.*

In *Loewe* v. *Lawlor*, (*supra*), the gravamen of the charge against the defendants was that customers of the Lawlor concern were threatened with the ruination of their business if they dealt with that concern, and there was no contention on the part of the Hatters that there was any strike or industrial dispute existing between these customers and this organization.

In the case of *Paine Lumber Company* v. *Neall*, (*supra*), there was no strike or industrial dispute existing between the complainant and the Carpenters' Union.

In the case at bar there is entirely an absence of evidence of any threat, plan or purpose to injure any customer of the appellant and it is conceded that there was an industrial dispute existing between the International Association and the appellant. The union pressmen, who operated the presses of the appellant, were never requested to cease work on these presses, although the defendants would have been within their rights to make such a request, and there is not even a suggestion in the record that this was done. All the evidence discloses is that the members of the International Association refused to handle and erect the presses of the appellant and that in some instances they attempted to induce others to cease handling and erecting the presses and that they notified purchasers and proposed purchasers of the appellant's presses that a strike existed at Battle Creek, Michigan.

What the International Association desired to accomplish cannot be distorted. Their purpose and intent first appeared in the issue of their trade journals in the year 1909 and followed continuously with their purpose to obtain an eight-hour

day and a minimum rate of wage, as showing the conferences with the appellant up to the time of the strike.

The gist of litigation of this character is for the court to determine whether the efforts of the defendants are made in good faith to advance the interests of the organization or whether its sole purpose is to inflict punishment upon the appellant. The good faith of the International Association in attempting to establish these conditions for the betterment of its members is evidenced by the testimony of every witness presented by the appellant.

Being unsuccessful through means of mediation, conciliation or arbitration in obtaining the eight-hour workday with the recognized minimum scale of wage the organization used the only weapon left to it, to wit: A strike, to accomplish the lawful end. In taking the position that it would do all of the work for the appellant or none of it the International Association was within its rights where its purpose to advance the interests of its membership is so easily spelled out as in the case at bar and if by the use of lawful means as were used in this case, namely, the withdrawing of the services of the members of the International Association, resulted in incidental injury to the appellant, a court of equity will not intervene and the right of injunction will not lie.

POINT II.

Irreparable injury to property and property rights is neither alleged nor proven by the appellant.

There was no evidence adduced on the trial which disclosed that the activity of the defendants and the International Association resulted in the cancellation of any contract or order for the appellant's presses.

There was no evidence adduced which disclosed that any financial loss was caused the appellant by the activity of the defendants and the International Association except such as could reasonably be assumed from the existence of a strike at Battle Creek, Michigan, and the refusal of the members of the International Association to handle and erect the presses of the appellant.

The Sherman Anti Trust Law, in Section 20, specifically states that:

> "No restraining order or injunction shall be granted by any Court of the United States * * * unless necessary to prevent irreparable injury to property or to a property right and party making the application for which injury there is no adequate remedy at law; and such property or property rights must be described with particularity in the application * * *."

Notwithstanding the total absence of proof on the trial the Amended Bill of Complaint does not allege irreparable injury to property or property rights and on that question the following are the paragraphs of the Bill of Complaint purporting to allege these facts:

"16. That your orator has a property interest in the freedom of all persons or corportations who are or might become customers of your orator, to purchase their printing presses from such manufacturers as they see fit, without constraint, duress, coercion or any other influence incompatible with free competition, and that by reason of the aforesaid conspiracy and the acts in furtherance thereof to cause costly labor troubles to your orator's customers and to interfere with the carting, installation and use of your orator's presses it is inevitable that nearly all of your orator's customers should eventually transfer their patronage to competitors of your orator rather than undergo said labor troubles so inflicted upon said customers for the purpose of injuring your orator's business, unless your orator can obtain relief from this honorable court (fols. 46-47).

"17. That on account of the aforesaid combination and conspiracy and the acts performed in furtherance thereof your orator has already suffered great loss and damage in its good will, trade and business, and is suffering a continuing injury and has no adequate remedy at law, because much of its said damage is incapable of definite proof for recovery in law and because it would be necessary for your orator to bring a multiplicity of suits against the great number of persons engaged in said conspiracy, and because many of said defendants are insolvent and would be unable to respond in damages, and because it is impossible for your orator to ascertain the full extent to which its good will, trade and business has been

deterred from placing contracts and orders with your orator by reason of the general rumors inspired by the defendants for the purpose of frightening away any newspaper which might patronize your orator's presses (folio 47 48).

"18. Your orator has already lost many customers on account of the aforesaid conspiracy, and its trade is being injured and jeopardized each day that the said conspiracy continues, and it is necessary that your orator have immediate relief in the form of a preliminary injunction, and that also a restraining order should issue out of this honorable court until such time as the defendants are ready for a hearing on a preliminary injunction. That if said restraining order is not issued the defendants and those acting in conjunction with them will carry out their said threats against the said National Exposition Company unless and until said National Exposition Company shall unlawfully repudiate its said contract permitting your orator to exhibit its said machinery at said exhibition in said Grand Central Palace in the week commencing April 18th, 1914, before the large number of newspaper representatives and possible customers who will visit said exposition. That if said exposition company refuses to extend its said contract with your orator, then its said exhibition of printing presses will be hindered and prevented in such a way as to irreparable injure the prestige and business of said exposition company, and your orator will lose the money which it has already spent for said exposition and the opportunity of advertising its said ma-

> chines before the newspapers of the country, and the great notoriety attached to said disturbance will reflect upon your orator and its ability to carry out contracts without disturbances, and be a lasting injury to its trade and good will. That if said exhibition company does not cancel its said contract with your orator, then your orator will be irreparably injured by being deprived of its widely advertised opportunity to exhibit at said annual exposition before the newspapers of the country and to secure contracts or orders in that way, and will lose the amount of money it has already spent for said purpose, and will find its trade and good will irreparably injured by reason of the notoriety and prominence which will be given to said disturbance both by the defendants and members of the trade generally, including your orator's competitors; that it is, therefore, necessary for your orator to have an *ex parte* restraining order without delay, to prevent the carrying out of said conspiracy to injure and destroy the said exposition company unless it will repudiate its lawful contract with your orator." (Pgs. 19-23.)

It will be noted that in Section 16 of the Amended Bill of Complaint the appellant urges a very broad proposition, to wit:

> "That your orator has a property interest in the freedom of all persons or corporations who are or might become customers of your orator to purchase their printing presses from such manufacturers as they see fit without restraint, duress, coercion or any

other influence incompatible with fair competition * * * and to cause such labor trouble to your orator's customers and to interfere with the carrying, installation and using of your orator's presses * * *."

The evidence affirmatively discloses that the defendants and the International Association did nothing more than to state to purchasers of the appellant's presses that a strike existed at Battle Creek, Michigan, and that it refused to permit its members to handle these presses in loading them into vehicles or in loading them from vehicles and erecting them in the plants of the purchasers.

It is impossible for the appellant to successfully urge that the freedom of others to deal with any concern they choose can be abridged by injunction which would prevent such persons from ascertaining the true facts in connection with the commodity purchased or to be purchased. If the New York Law Journal desires to purchase a press from the appellant, clearly it is entitled to know whether the appellant can deliver and erect the press and an injunction such as prayed for in this action would prevent the proprietors of the New York Law Journal from being informed by the defendants that because of a strike between the International Association and the Appellant, members of the union would not handle and erect the appellant's press. The appellant claims that it has a property right in preventing the proprietor of the New York Law Journal from having the fact that a strike existed called to his attention. While it might and probably would enable the appellant to sell more presses it would obviously be contrary to all known rules of equitable jurisprudence and give, by injunction, rights to the appellant which affect primarily business interests of other employers and

of its own customers. Furthermore, to say that the members of the International Association, during a strike of its members in the appellant's factory at Battle Creek, Michigan, may not co-operate with the other members of the International Association and refuse to handle the product of the appellant is to abridge the freedom to contract, which is one of the most essential features of our constitutional guarantees. If the appellant could enjoin the machinists from refusing to handle these presses during its strike, it would be granting by such injunction rights contrary to the freedom of men to contract and by an injunction founded on an allegation of conspiracy, workmen would be forced to work for and be employed by an employer contrary to their desires and legal rights; and contrary to their constitutional guarantees.

The appellant is in the position to employ or not to employ such men as it chooses and no workman can appeal to a court of equity and compel the appellant to employ him, no matter how great his personal necessities may be or whether the refusal of the appellant to employ him may result in his not having the means to sustain himself or his family. The appellant has the right which no court can abridge—to employ whom it chooses. Likewise the workingmen have the right which no court can abridge—to choose whom they will work for and under what conditions they will work—and it is no more a conspiracy for the defendants to refuse to handle the appellant's presses during a strike of its members than it would be for the appellant to refuse to allow its men to handle its presses.

The property right which in paragraph 16 the appellant alleges it possesses is nothing more than the right to solicit business under fair competition. This right is similar to the right that the defend-

ants have to work for whom they choose and under what conditions they choose.

These rights are not property rights—they are personal rights—and the right which the defendants have to solicit whom they shall work for and under what conditions they shall work, and the right which the appellant has to absolute freedom from whom they shall solicit business and the right of every proposed purchaser to determine what manufacturer he will deal with are co-relative and stand on the same basis. It is obnoxious to the very spirit, not alone of the Constitution, but of fair dealing, to urge that where the defendants are exercising their freedom of determining under what conditions they will work for the appellant, and the appellant is exercising the same right in determining whom it shall employ and the terms of their employment, that a court of equity should interfere and by injunction deprive one of the parties of its freedom and make an exercise of that freedom punishable by the drastic methods of a restraining order.

The appellant's whole case, from the allegations of the complaint to its statements in its brief, all carry out he antediluvian position stated by Mr. Stone, the Chairman of the Board of Directors of the appellant, when he stated at (fol. 399): "I simply took the position they had no right to make any demand."

There is no property interest of the appellant threatened and no act done or threatened which in any way affects propert yrights.

At the conclusion of the trial of the case of *Paine Lumber Co.* v. *Neall* (*supra*), Mr. Justice Mayer, in writing the opinion denying the application of the complainant for an injunction at 212 Fed. Rep., pages 267, 268, says:

"Of the many cases cited I find none authoritative where a general business situation in the case of employers or a general trade situation in the case of employees was corrected by injunction at the instance of private suitors.

"Ample remedy is provided at common law or by statute for recovery of money damages in actions by private litigants. The courts have time and again extended the equity arm to prevent the commission or continuance of injury directed against particular persons and have protected employers against violence and sympathetic strikes; but where the purpose of an injunction is, as in the case at bar, to attempt to control a large body of men generally to work or not to work on a class of goods, or in a kind of manufacture (as distinguished from a specific instance or instances as above discussed) the remedy of injunction is not to be granted in a litigation between private parties."

In the case at bar the appellant assumes the attitude that it is the only one entitled to the freedom to contract guaranteed by the Constitution and urges that the defendants should be enjoined from the exercise of the same freedom. We are confident that this contention will not meet with the approval of this court.

POINT III.

There being no proof adduced upon the trial of irreparable injury to property and property rights, only the United States could apply for injunctive relief under the Sherman Act.

Paine Lumber Co. v. Neal, 244 U. S. 459.
Blindell v. Hogan, 54 Fed. Rep. 40.

Mannington v. Hocking Valley R. R. Co. 183 Fed. Rep. 140.

Southeastern Express Co. v. U. S. Express Co., 88 Fed. Rep. 650. Affd. 35. C. C. A. 172.

Metcalf v. American School Furniture Co., 108 Fed. Rep. 909.

National Fireproofing Co. v. Mason Builders Association, 26 L. R. A. (N. S.) 148.

United States v. Addington Pipe & Steel Co., 16 L. R. A. 122. 29 C. C. A. 141. 54 U. S. App. 723.

Minnesota v. Northern Securities Co., 194 U. S. 48.

The appellant urges that its right to apply for an injunction is predicated upon the Clayton amendment to the Sherman Anti-Trust Act, under the provisions referring to irreparable injury to property and property rights.

A careful reading of the record discloses that no evidence was adduced that the appellant had ever lost a sale through the activities of the defendants, nor was there ever an instance where a press was sold where it was not erected at the plant to which

it was consigned and that after erection there never was at any time any refusal upon the part of the pressmen or any other mechanic to operate the press in the plant of the customer of the appellant.

The only evidence adduced was that the appellant having refused to establish a minimum rate of wage at its plant at Battle Creek, Michigan, and having refused a minimum rate of wage in the manufacture of its presses at Battle Creek, Michigan, the members of the Machinists' Union refused to handle or erect the presses manufactured under the conditions as existed at Battle Creek, Michigan, and during the period when the members of the Machinists' Union were out on strike as against the Appellant at the point of manufacture.

Certainly whatever interpretation may be placed upon the Clayton Amendment to the Sherman Anti-Trust Law, it cannot be successfully argued that under its terms and by its provisions it intended to grant further rights and privileges to employers to enjoin the members of labor organizations. If the amendment had not been passed there could be no argument presented that the Appellant was entitled to an injunction.

Paine Lumber Co. v. Neal, 244 U. S. 459.

The Appellant cannot maintain this suit in order to declare the organization to which the respondent belongs unlawful under the Sherman Act.

National Fireproofing Co. v. Mason Builders Association, 26 L. R. A. (N. S.) 148.

To render an association or organization unlawful under the Act of July 21, 1890, it must appear that such combination was formed for the purpose of restraining trade or commerce among the sev-

eral states or foreign nations, or that such restraint unnecessarily resulted from such combination and thus deprived the public of the benefits which flow from free competition.

> *United States* v. *Trans Missouri Freight Assn.*, 166 U. S. 290.
>
> *Whitwell* v. *Continental Tobacco Co.*, 64 L. R. A. 689, 60 C. C. A. 290, 125 Fed. 454.
>
> *Gibbs* v. *McNeely*, 60 L. R. A. 152.
>
> *Riglow* v. *Calumet & S. S. Min. Co.*, 167 Fed. 709.
>
> *Bossert* v. *Dahl*, 221 N. Y. 342.

In *Paine Lumber Co.* v. *Neal*, 244 U. S. 459, at page 471, Mr. Justice Holmes, speaking for the Court, said:

> "We shall not believe that the ordinary action of a labor union can be made the ground of an injunction under those laws until we are so instructed by the New York Court of Appeals."

In *Bossert* v. *Dahl*, 221 N. Y. 342, a decision rendered almost immediately after the decision of this Honorable Court in the case of the *Paine Lumber Co.* v. *Neal* (*supra*), the Court said:

> "An association of individuals may determine if its members shall not work for specific employers of labor. The question, however, is as to its purpose in reaching such determination. If the determination is reached in good faith; for the purpose of bettering the condition of its members and

> not through malice or otherwise to injure an employer, the fact that such action may result in causing injury to the employer does not constitute justification for issuing an injunction against enforcing such action. * * *
>
> "Certainly the condition complained of has no tendency to produce a monopoly of manufacture of building since the more successful it is the more competitors are introduced into the trade.

The record discloses that the conditions requested of the appellant were the same as all others engaged in the same character of manufacture in the trade and that at the time of the commencement of this action, the conditions requested of the appellant were in force and in effect in similar plants manufacturing similar products throughout the United States of America. The concluding paragraph in the quotation above *re Bossert* v. *Duhl*, is applicable with full force and effect in the instant case.

The activities of the defendants would not have a tendency to interfere with competition but would in fact make the competition more free and permit manufacturers of printing presses to continue the manufacture and sale of these printing presses in free competition with each other as to the cost of manufacture.

POINT IV.

There was no interference with interstate commerce.

The Anti Trust Laws described commerce as follows:

> "Commerce," as used herein, means trade or commerce among the several States and with foreign nations or between the District of Columbia or any Territory of the United States and any State, Territory, or foreign nation, or between any insular possessions or other places under the jurisdiction of the United States, or between any such possession or place and any State or Territory of the United States or the District of Columbia or any Territory or any insular possession or other place under the jurisdiction of the United States: *Provided*, That nothing in this Act contained shall apply to the Philippine Islands."

The appellant did not contend upon the trial that the International Association or the defendants interfered with or attempted to interfere with the shipment of presses from Battle Creek, Michigan; nor did the appellant contend or attempt to prove that the International Association or the defendants interfered with or attempted to interfere with the transportation of the appellant's presses en route to their places of consignment. Wherever testimony was offered as to the shipment of a press, it appeared without contradiction that the press was shipped without any interference by the defendants or the International Association and that it reached its place of consign-

ment without any effort being made to hinder or delay the press while en route. All complaints on the part of the appellant with respect to the delivery and erection of the presses consists of the refusal of the members of the International Association to transport and handle the product of the appellant after it had reached its point of consignment. This refusal caused embarrassment in some instances in a local way and the appellant alleges that because men employed by draymen refused to work that interstate commerce was interfered with. If this proposition is sound then teamsters and machinists' helpers employed by draymen could not legally combine or cease from working as in every instance no matter how local the situation was the contention would be raised that interstate commerce had been interfered with.

The evidence so clearly enunciates these facts and the proposition is so elementary that the defendants believe further argument is unnecessary and simply desire to present the opinion of the Supreme Court of the United States on the question. Primarily, however, the defendants urge that the fact that the appellant's profits may be less because the defendants have directed machinists who are members of the International Association not to handle and erect these presses does not constitute interference with interstate commerce.

In *United States* v. *Knight Company*, 156 U. S. 1, at page 12 Chief Justice FULLER says:

> "Doubtless the power to control a manufacturer of a given thing, involves in a certain sense the control of its disposition, but this is a secondary and not a primary sense, and although the exercise of that power may bring the operation of commerce into play,

it does not control it, and succeeded to manufacture and is not a part of it, but, however, the regulated commerce has the power to prescribe the rule by which commerce is to be governed."

In *Anderson v. United States*, 171 U. S., at page 615, Mr. Justice PECKHAM said:

"Where the subject matter of the agreement does not directly relate to or act upon and embrace Interstate Commerce, and where the undisputed facts fairly show that the purpose of the agreement was not to regulate commerce, but that it was entered into with the object of properly and fairly regulating the business in which the parties to the agreement were engaged, such agreement will be upheld and is not within the statute, where it can be seen that the character and terms of the agreement are well calculated to attain the purpose for which it was formed, and where the effect of its formation and enforcement upon interstate trade or commerce is in any event but indirect and incidental, and not its purpose or object. As is said in *Smith v. Alabama*, 124 U. S. 465, 473: "There are many cases, however, where the acknowledged powers of a State may be exerted and applied in such a manner as to affect foreign or interstate commerce without being intended to operate as commercial regulations." The same is true as to certain kinds of agreements entered into between persons engaged in the same business for the direct and bona fide purpose of properly and reasonably regulating the conduct of their business among them-

selves and with the public. If an agreement of that nature, while apt and proper for the purpose thus intended, should possibly, though only indirectly and unintentionally, affect interstate trade or commerce, in that event we think the agreement would be good. Otherwise, there is scarcely any agreement among men which has interstate or foreign commerce for its subject that may not remotely be said to, in some obscure way, affect that commerce and to be therefore void. We think, within the plain and obvious construction to be placed upon the act, and following the rules in this regard already laid down in the cases heretofore decided in this court, we must hold the agreement under consideration in this suit to be valid."

See also *Pettibone v. U. S.*, 148 U. S. 197.

POINT V.

Labor of a human being is not a commodity or article of commerce.

Section 6 of the Sherman Anti-Trust Law, as amended by the Clayton Act, reads as follows:

> "U. 323, Section 6: The labor of a human is not a commodity or article of commerce. Nothing contained in the anti-trust laws shall be construed to forbid the existence and operation of labor, agricultural, or horticultural organizations, instituted for the purpose of mutual help, and not having cap-

> ital stock or conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof; nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the anti-trust laws."

The appellant urges that an injunction should lie in this action and cites as precedents for its contention a line of decisions. (*National Service Co.* v. *U. S.*, 193 U. S. 197; *U. S.* v. *Patten*, 226 U. S. 525; *Standard Oil Co.* v. *U. S.*, 221 U. S. 1; *Duluth Board of Trade*, 121 U. S. 395; *Eastern State Retail Lumber Dealers' Association* v. *U. S.*, 234 U. S. 600; *Loewe* v. *Lawlor*, 208 U. S. 274), which with the exception of *Loewe* v. *Lawlor* have no relevancy to the case at bar. All of these decisions are predicated upon the premise of an illegal combination or conspiracy to control a commodity or article of commerce.

As previously stated, the defendants urge that the decision in the case of *Loewe* v. *Lawlor* (*supra*) was the controlling factor in the deliberations of Congress in amending Section 6 so as to exclude the labor of a human being from being a commodity or article of commerce.

Prior to the enactment of the anti-trust laws the Federal Courts were without jurisdiction to deal with monopolies, as such. It was the enactment of the anti-trust laws which gave the Federal Court the broad power to curb combinations affecting the economic conditions throughout the States. When the decision in *Loewe* v. *Lawlor*, 235 U. S. 522, (Danbury Hatters' case) was rendered, the Sherman Law had not been amended and the United States Supreme Court in arriving

at its conclusions treated the labor of human beings as a commodity or article of commerce. Since that decision was rendered Congress, with the approval of the President, has declared that the labor of a human being is not a commodity or article of commerce, and has declared

> "that nothing in the anti-trust laws shall be construed to effect the existence and operation of labor organizations."

Labor organizations, as such, have been excluded from the anti-trust law and the power of the United States Courts limited to granting restraining orders or injunctions against such organizations only when it shall appear that such restraining order or injunction is necessary to prevent irreparable injury to property or to a property right and clearly sets out that the party making the application, for which injury there is no adequate remedy at law, must describe the property and property right with particularity. There being no proof of irreparable injury to property or to a property right in this action; there being no proof that an adequate remedy at law does not exist for the appellant and there being no allegation in the bill of complaint that irreparable injury was caused to property or to a property right where no adequate remedy at law exists, the application for the injunction must be denied.

The section of the anti-trust law which specifically states that the labor of a human being is not a commodity or article of commerce renders the prior decisions impotent and necessitates a consideration of the activities of labor organizations from the viewpoint as laid down by Congress.

POINT VI.

Irrespective of the Clayton Act there were no facts adduced on the trial which would warrant the issuance of an injunction.

The decisions of the courts, both of the United States and of the State of New York, are unanimous on the proposition that workingmen have the right to cease work; that after a strike they have the right to peacefully picket and that they have the right to persuade others by peaceful means to cease employment, to cease to patronize and to persuade others by legal means to cease to patronize.

The question which the court has been called upon to determine in litigation of this character is the purpose and object of the association. If the defendants' motives and purposes were to improve the condition of the members of the union and to advance their general welfare, this court will not restrain them, even though incidental injury results to the appellant. The testimony of the witness Stone, the Chairman of the Board of Directors, of the appellant and its former President and General Manager, discloses conclusively that the purpose and motive of the International Association was to improve the general condition of its members engaged in this industry by shortening the hours of labor and advancing the wages of the men engaged in that particular industry. These facts are borne out from the following testimony of Mr. Stone:

> "Q. During all of the time from 1909 up to and including 1913, up to the time of the strike, Mr. Keppler in all of his conferences

with you was urging you to establish an eight-hour day at your plant, was he not? A. Yes, if you call it urging.

"Q. And he was urging you to pay as a minimum scale of wages to the men employed in your plant the union rate of wages, was he not? A. Yes.

"Q. He had told you at all of these conferences and subsequent to 1909 and between that date and 1913 that there was an effort being made by the International Association of Machinists to create an eight-hour day in this industry that you were engaged in? A. Yes.

"Q. And he told you that in this whole industry he was trying to create union conditions as to the payment of a minimum wage for the eight hours of labor, did he not? A. Yes.

"Q. And the effort of the International Union was not only to have you establish an eight-hour day and pays a minimum rate of wage to the men employed as machinists, but to have that done in all plants in the country where your industry was involved; you knew that, and had been told that? A. Yes.

"Q. So you, as far as this Union was concerned in their requests and demands upon you, they were similar to the demands made upon the Hoe Company, upon the Goss Company and upon the other printing press manufacturers in this country; that is a fact, is it not? A. I simply took the position that they had no right to make any demand.

"Q. I appreciate what your position was, but I am asking you a question; their de-

mands were similar? A. If you call it a demand; I do not recognize a demand of that sort.

"Q. But that is a fact that they were asking the same from others? A. Asking, yes.

"Q. That they were asking from you? A. Yes.

"Q. So that they did not select you from all the printing press manufacturers or men in this industry to ask these things of, did they? A. No." (Fols. 398 to 401.)

The witness Cochrane, testifying in behalf of the appellant with respect to a conversation he had with Deering and Neyland, prior to the exposition in 1914, testified:

"Q. You also testified that Mr. Neyland and Mr. Deering told you that the reason they were insistent that the strike at Battle Creek be settled before their men handled the machinery was that the Goss and the Hoe people would withdraw the conditions which had been granted to their men.

"A. Well, we understood it, that if the Duplex Company did not accede to the same conditions as Goss and Hoe, Goss and Hoe would then throw open their shops." (Fol. 353.)

This testimony discloses beyond all question of doubt that the purpose of the defendants and the International Association was not only to create general working conditions for the members of the International Association but also to retain those conditions in plants where they had been inaugurated. Furthermore, the appellant offered in evidence an extract from the Machinists' Monthly

Journal published under date of 1913, which contained the following utterance of Vice-President Kepper of the International Association:

> "It is not the desire of the interested associations to resort to strikes as the entire elimination of all conditions that would bring about the dissension is more conducive to the general welfare of all concerned as strikes and kindred procedure should not be necessary to secure the consent to working condiitons so patently fair and equitable. It is intended, however, that the eight-hour day should become effective in the printing and paper making machinery industry."

The right of a labor union to refuse to work on material manufactured by nonunion men and their right to notify others that they would refuse to work on such nonunion made product has been given careful consideration by the Court of Appeals of the State of New York. This proposition was last considered in the State of New York in the matter of *Bossert* v. *Duhl*, 221 N. Y. 342, and because of the fact that it is on "all fours" with the case at bar a large part of the opinion is submitted for the perusal of this Honorable Court:

> "The material part of the judgment appealed from is as follows: "It is adjudged that the defendants, their attorneys, agents, servants, associates and all persons acting in aid of or in connection with them and each of them, be and they hereby are perpetually enjoined and prohibited from conspiring, combining, or acting in concert in any manner to injure or interfere with the

plaintiff's good will, trade or business by any of the following means, to wit:

"By sending to any customer or prospective customer of plaintiffs, any letter, circular or communication printed, written or oral, which interms or by inference suggests that labor troubles will follow the use of materials purchased from plaintiffs or from any person, firm or corporation declared unfair, or whose material does not bear the union label, meaning the plaintiffs thereby; or

"By inducing, ordering, directing, requiring or compelling by any by-law, rule or regulation or any act thereunder any person whatever to refrain from or cease working for any person, firm or corporation because they use material purchased of or furnished by plaintiffs, or by any person, firm or corporation declared unfair, or whose material does not bear the union label, meaning the plaintiffs thereby.

"And the defendants are further enjoined from inducing any workmen in other trades to quit work on any building because non-union carpenters are there employed to install the plaintiffs' materials which union carpenters refuse to handle or install.

"Nothing herein contained is to be construed to prevent peaceable strikes except those directed against customers or prospective customers or plaintiffs for the purpose of injuring or interfering with plaintiffs' good will, trade or business. . . ."

In reversing the judgment and denying the right to an injunction the Court of Appeals said:

"And whenever the courts can see that a refusal of members of an organization to work with non-members may be in the interest of the several members, it will not assume, in the absence of a finding to the contrary, that the object of such refusal was solely to gratify malice and to inflict injury upon such non-members. . . . Those principles concede the right of an association to strike in order to benefit its members; and one method of benefiting them is to secure them employment, a method conceded to be within the right of an organization to employ."

Judge McLaughlin, now of this court, then in the Appellate Division, writing in the *National Protective Association* v. *Cumming* case in that court (53 App. Div. 227, 230), said: "The Enterprise Association refused to permit its members to work upon any job where the members of the plaintiff were employed, and informed the employer in each instance that unless the members of the plaintiff were discharged its members would strike or, in other words, abandon the job, which they did, or threatened to do, in the three instances specified in the complaint; that they neither used force nor did anything tending to a breach of the peace other than that included in its threat to order a strike or withdraw its members, as well as the members of the other associations allied with it, from the work on which they were engaged. . . . This is all that the Enterprise Association did. It was seeking to obtain employment for its own members, and wherever it found places filled by members of the plaintiff association it

procured their discharge in order that the employment might be given to members of the Enterprise Association, and in case that was not done, they either withdrew or threatened to withdraw from the work."

It is unnecessary in the case now under consideration to hold that in all cases and under all circumstances, whatever a man may do alone he may do in combination with others, but it was clearly established in the National Protective Association case that workingmen may organize for purposes deemed beneficial to themselves, and in that organized capacity may determine that their members shall not work with non-union members or upon specified work or kinds of work.

It was not illegal, therefore, for the defendants to refuse to allow members of the Brotherhood to work in the paintiff's mill with non-union men. The same reasoning results in holding that the Brotherhood may by voluntary act refuse to allow its members to work in the erection of materials furnished by a non-union shop. Such action has relation to work to be performed by its members and directly affects them. The voluntary adoption of a rule not to work upon non-union material and its enforcement differs only in degree from such voluntary rule and its enforcement in a particular case. Such a determination also differs entirely from a general boycott of a particular dealer or manufacturer with a malicious intent and purpose to destroy the good will or business of such dealer or manufacturer. An act when done maliciously and for an illegal purpose may be re-

strained and held to be within the bounds of reasonable business competition when done in good faith and for a legal purpose (see Ruling Case Law, vol. 16, pp. 431, 432 and 433). . . .

An association of individuals may determine that its members shall not work for specified employers of labor. The question ever is as to its purpose in reaching such determination. If the determination is reached in good faith for the purpose of bettering the condition of its members and not through malice or otherwise to injure an employer, the fact that such action may result in incidental injury to the employer does not constitute a justification for issuing an injunction against enforcing such action.

Workingmen cannot be compelled to work when by so doing their position as workingmen will be injured simply because if they do not continue their work a manufacturing employer will not be able to sell as large a quantity of material as he otherwise would and thus his good will, trade or business may be affected (see extended discussion in Harvard Law Review, vol. 20, pp. 253, 345, 429.) "The United States Supreme Court has recently had before it the case of *Paine Lumber Company* v. *Neal* (244 U. S., 459, 471,) which was an action to enjoin the United Brotherhood of Carpenters and Joiners of America from conspiring to have its members refuse to work upon material made by the plaintiffs in that action because not made by union labor, and also to enjoin them from enforcing by-laws intended to prevent its members from working upon what is called unfair material. The injunction was

denied. Justice Holmes, speaking for the court, in affirming the judgment appealed from and referring to the controversy, said: 'As this court is not the final authority concerning the laws of New York, we say but a word about them. We shall not believe that the ordinary action of a labor union can be made the ground of an injunction under those laws until we are so instructed by the New York Court of Appeals (*National Protective Ass'n of Steam Fitters and Helpers* v. *Cumming*, 170 N. Y., 315). Certainly the conduct complained of has no tendency to produce a monopoly of manufacture or building since the more successful it is the more competitors are introduced into the trade. Cases like *Kellogg* v. *Sowerby* (190 N. Y. 370,) concerning conspiracies between railroads and elevator companies to prevent competition, seem to us very clearly not to have been intended to overrue the authority that we cite, and not to have any bearing on the present point'."

The facts in the Paine Lume Company case were substantially the same as the facts in the case now before us, and we understand the Supreme Court of the United States to assert in substance and effect that an ordinary common-law action should not, even considered with the statutes now in force, be sustained in this state upon the facts shown in that case or in the case now before us. . . .

Upon all the findings before us the statement in the finding that there was a "combination to organize all the non-union mills of Brooklyn" simply means that the Brotherhood determined to carry out the provi-

sions of its constitution relating to non-union made material by insisting upon its enforcement and by imposing the penalties provided thereby in case of failure of any of its members to comply therewith. The further statement as to the "orders of the business agents" simply means that the representatives of the Brotherhood called the attention of union carpenters employed on buildings where non-union material was being erected to the consequences to them as members of the Brotherhood in case they continued such employment. . . .

We think that the rules laid down by this court in the National Protective Association case require a reversal of the judgment in favor of the plaintiff upon the findings before us. When it is determined that a labor organization can control the body of its members for the purpose of securing to them higher wages, shorter hours of labor and better relations with their employers, and as a part of such control may refuse to allow its members to work under conditions unfavorable to it, or with workingmen not in accord with the sentiments of the labor union, the right to refuse to allow them to install non-union-made material follows as a matter of course, subject to there being no malice, fraud, violence, coercion intimidation or defamation in carrying out their resolutions and orders.

Voluntary orders by a labor organization for the benefit of its members and the enforcement thereof within the organization is not coercion. The members of the organization, as we have already stated, who are not willing to obey the orders of the organi-

zation are at liberty to withdraw therefrom. The bounds beyond which an association of employees may not as a general rule go in controlling its members in their dealings with employers are not easily determined. They cannot at least extend beyond a point where its or their direct interests cease. There is a material difference in the power of an association so far as it affects its primary or secondary interest. Where the acts of an employee or employees in their individual or associate capacity are reasonably and directly calculated to advance lawful objects they should not be restained by injunction.

A strike or boycott may be legal or illegal according to the acts involved therein (*Gray* v. *Building Trades Council*, 91 Min., 171; *State* v. *Van Pelt*, *supra*; *Gin Mfg. Co.* v. *Doerr*, 214 Fed. Rep., 111; *Mills* v. *U. S. Printing Co.*, 99 A. D., 605 a'd 199 N. Y., 76; see also opinion of Andrews J., in *Seubert, Inc.*, v. *Reiff*, 98 Misc. Rep., 402), so an action for a direct and primary purpose in the interest of indivduals or a combination of individuals taken in good faith to advance the interest of the individuals or combination may be lawful, while a remote and secondary action which carries with it a degree of malice as a matter of law is illegal. In the case now before us if the defendants had called upon the public generally to discontinue using the plaintiff's material and had sought to prevent all persons by communications, written or otherwise from dealing with the plaintiff, their acts would have been illegal.

It does not appear from the record that

the defendants in any way interfered with the trade or business of the plaintiff except that the members of the Brotherhood were by their voluntary action required to decline using material made in non-union shops, and announcement was made of such intention that the same might be known by contractors in advance of the contracts to be entered into in connection with the erection of the work. Such action of the defendants did not extend beyond such refusal to install non-union made material, and so far as it amounted to either a strike or a boycott, it directly affected the Brotherhood and its members.

An examination of the many cases called to our attention by the plaintiff will show that in most instances the acts criticized and condemned were not directly connected with the purpose sought to be conserved by the defendants therein. A few of such cases are as follows: *Loewe* v. *Lawlor* (208 U. S., 274), *Bailey* v. *Master Plumbers Association* (— Tenn., —, s. c., 52 S. W. Rep., 273), *Rocky Mountain Bell Telephone Co.* v. *Montana Fed. of Labor* (156 Fed. Rep., 809), *Barnes* v. *Chic. Typ. Union* (232 Ill., 424), *Iron Moulders' Union* v. *Allis Chalmers Co.* (166 Fed. Rep., 45)."

A labor organization, as such, has never been construed as a conspiracy either at Common Law or under the Statutes.

Lindsay & Co. v. *Montana Federation of Labor*, 37 Montana 264.

Macauley v. *Tierney*, 19 R. I. 255.

Ames v. *Union R. R. Co.*, 62 Fed. 14.

National Protective Assn. v. *Cummings*, 170 N. Y. 315.

State v. *Stockford*, 77 Conn. 227.

In *Gill Engraving Co.* v. *Doerr*, 214 Fed. Rep., 111, the activity of a labor organization in New York City was made the subject of an action in the Federal Court. In that case the defendants generally addressed communications to customers of the complainant urging that the business of the customers be turned from the complainant to union shops. The activity of the defendants is clearly set forth in the opinion. In that case Mr. Justice Hough said:

> "I do not perceive any distinction upon which a legal difference of treatment should be based between a lockout, a strike and a boycott. They often look very unlike, but this litigation illustrates their basis identity. All are voluntarily abstentions from acts which normal persons usually perform for mutual benefit; in all the reason for said abstention is a determination to conquer and attain desire by proving their endurance of the attack will outlast the resistance of the defense; and for all the law of New York provides the same test, namely, to inquire into the legality (1) of the object in view, and (2) of the means of attainment."

The Circuit Court of Appeals, in the case of *National Fireproofing Company* v. *Masons Builders' Association, et. al.*, 169 Fed. Rep., 263, held that:

> "Laborers may combine for mutual advantage and so long as the motive is not malicious, the object not unlawful or oppressive, and the means neither deceitful nor fraudulent, the result is not a conspiracy, although it may necessarily work injury to others."

In *National Protective Association* v. *Cummings*, 170 N. Y., 324, the Court, by Chief Justice PARKER, at page 321, says:

> "Workingmen have the right to organize for the purpose of securing higher wages, shorter hours of labor or improving their relations with their employers. They have the right to strike; that is, to cease working in a body by pre-arrangement until a grievance is redressed, provided the object is not to gratify malice or inflict injury upon others, but to secure better terms of employment for themselves. A peaceable and orderly strike, not to harm others, but to improve their own conditions, is not in violation of law."

The purpose and objects of these defendants cannot in any way be questioned. Their purpose and object was to establish an eight-hour day and a minimum scale of wage in the industry in which the complainant was engaged and that fact had been announced to the complainant some four years prior to the strike at Battle Creek and after every effort had been made to obtain these conditions by arbitration and conciliation. As said by Mr. Justice HOUGH in *Gill Engraving Co.* v. *Doerr* (*supra*):

> "What motive incited defendants to injure Gill Company? None, except that it hinders the expansion and aggrandizement of the union, and therefore gives rise to the same kind of objection that the soldier has to the man who prevents his onward march. It can rarely be said that the soldier is moved by a desire to kill his opponent, but he will kill him if necessary."

Further on in his opinion, Mr. Justice HOUGH at page 121 says:

> "In the United States Courts for this circuit, *National Fireproofing Co.* v. *Mason Builders' Ass'n.*, 169 Fed., 259, 94 C. C. A., 535, 26 L. R. A. (N. S.), 148, is controlling. It accepts the New York cases fully, piously regrets the injuries committed, and writes the epitaph of litigation such as this by declaring that, when equal legal rights clash, equity is helpless. This is true; it would have been just as true to point out that the result of legalizing strikes, lockouts, any boycotts under any circumstances must be that those who understand the use of such legal tools can always keep within the law and accomplish their main purpose while inflicting all necessary 'incidental' injury."

The testimony of the General Manager of the appellant discloses beyond all question of doubt that the motive and purpose of the defendants and the International Association was to improve the condition of the men engaged in the trade by shortening the hours of labor and increasing the wage therefor. The history of litigation of this charac-

ter as recited discloses that where the motives of the defendants are to improve their own condition that a court of equity will not restrain them. With this litigation, to say the least, equitable rights conflict and an injunction must be denied.

POINT VII.

The record discloses, without contradiction, that the purpose of the organization of which the defendants are members was to establish throughout the trade the eight hour work-day and a minimum rate of wage.

The appellant's brief, from its inception, is predicated upon the theory that the defendants were engaged in a conspiracy to injure it and that its main and sole purpose is to destroy its business and good will. This statement is contradicted by the testimony of the President of the appellant, found at fos. 396 to 400 of the record.

> "Mr. Keppler and Mr. Edwards had continuously urged arbitration of the strike. We are working our men ten hours a day at Battle Creek at the present time, and we pay them from $2 to $10 a day, but we do not have any uniform minimum scale.
>
> "During all this time from 1909 to 1913, up to the time of the strike, Mr. Keppler was urging me to establish an eight-hour day and the union rate of wage as a minimum scale.
>
> "Q. He had told you at all of these conferences and subsequent to 1909 and be-

tween that date and 1913, that there was an effort being made by the International Association of Machinists to create an eight-hour day in this industry that you were engaged in. A. Yes.

"Q. And he told you that in this whole industry he was trying to create union conditions as to the payment of a minimum wage for the eight hours of labor, did he not? A. Yes.

"Q. Certain letters were sent you which were received by others, as far as you know? A. Yes.

"Q. And the effort of the International Union was not only to have you establish an eight-hour day and pay a minimum rate of wage to the men employed in the country where your industry was involved; you know that, and had been told that? A. Yes.

"Q. So you, as far as this union was concerned in their requests and demands upon you, they were similar to the demands made upon the Hoe Company, upon the Goss Company and upon the other printing press manufacturers in the country; that is a fact, is it not? A. I simply took the position that they had no right to make any demand.

"Q. I appreciate what your position was, but I am asking you a question; their demands were similar? A. If you call it a demand; I do not recognize a demand of that sort.

"Q. But that is the fact, that they were asking the same from others? A. Asking, yes.

"Q. So that they did not select you from all the printing press manufacturers or

men in this industry to ask these things of, did they? A. No.

"Q. Or attempt to enforce them? A. No. (Fols. 3961400.)

In the appellant's very exhaustive brief, the appellant cites a number of cases which are not applicable to the case at bar. It relies primarily upon the decision in the *Hitchman Coal & Coke Co.* v. *Mitchell*, 245 U. S. 229; *Dr. Miles Medical Co.* v. *J. D. Park & Sons*, 220 U. S. 373; *United States* v. *Rintelen*, 233 Fed. 793, 799; *Auburn Draying Co.* v. *Wardell*, 227 N. Y. 1.

In *Hitchman Coal & Coke Co.* v. *Mitchell*, it was decided by this Honorable Court that the question involved was the attempted persuasion to break a contract of employment.

No evidence is adduced in this case of any attempt to breach a contract. The evidence disclosed that an effort was made to have a customer use his good offices to settle the controversy between the appellant and the International Association of Machinists.

In the *United States* v. *Rintelen*, the Court obviously understood the purpose of the conspiracy was not to have it call strikes for the purpose of improving the condition of the workmen, Rintelen not being a member of any labor union, but that its purpose was to prevent the manufacture of such material as might be used against the German Empire in the late world's war.

The appellant in its logic starts from a false premise, assuming an improper motive which was absolutely contradicted by all of the evidence and from this false premise builds its arguments.

The cases relied upon by the appellant are only those where it has been found from the evidence that a conspiracy in violation of law existed.

All that the defendants in this action did was to refuse to work for the appellant. The principle was enunciated that "we will do all of your work or none of it" and the efforts of the appellant in this action is to obtain a decree of this Court to the effect that the appellant may employ non-union men ten hours per day at wages ranging from $2 to $10 per day to manufacture its machines in Battle Creek, Michigan, and that union men throughout he country in those cities to which the presses are consigned must erect them without complaint.

The decree requested is not to be a decree of injunction or prohibition but is a mandatory decree which has for its effect the direction of the Court to compel members of the union of which the defendants are members, to perform work upon a non-union made product manufactured under conditions which they deem to be unfair and to work upon those products without complaint and against their will, wishes and desires.

This character of injunction, if granted, would be a novel one in the history of this country and would deprive the members of the defendant union of its constitutional right to work for those whom they please.

POINT VIII.

It is respectfully submitted that the judgment be affirmed.

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